BEFORE THE

COMMITTEE ON ENERGY AND COMMERCE
SUBCOMMITTEE ON TELECOMMUNICATIONS
AND THE INTERNET
UNITED STATES HOUSE OF REPRESENTATIVES

TESTIMONY OF THE HONORABLE DIANE MUNNS
COMMISSIONER, IOWA UTILITIES BOARD
&
PRESIDENT,
NATIONAL ASSOCIATION OF REGULATORY UTILITY COMMISSIONERS ("NARUC")

ON

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National Association of
Regulatory Utility Commissioners
1101 Vermont Ave, N.W., Suite 200
Washington, D.C. 20005
Telephone (202) 898-2200, Facsimile (202) 898-2213
Internet Home Page http://www.naruc.org

Mr. Chairman, Ranking Member Markey and members of the Subcommittee, thank you for the opportunity to testify today on behalf of the National Association of Regulatory Utility Commissioners (NARUC). NARUC represents State public utility commissions in all 50 states and the US territories, with oversight over telecommunications, electricity, gas, water and other utilities.

Just like the members of this Subcommittee, NARUC's members are continually seeking the best solutions to the policy issues that impact our nation's evolving telecommunications markets. While there is significant diversity of opinion and thought among State commissioners, my testimony today is intended to present the consensus positions that have emerged from NARUC's internal discussions and also highlight the challenges we face together as Federal and State policymakers seeking to protect consumers, facilitate competition, promote universal service and otherwise encourage a reliable, dynamic, effective communications system for the 21st Century.

Legislative principles and federalism:

In response to congressional interest in reexamining the Telecom Act, NARUC formed a Telecom Legislative Task Force in 2004 and approved a resolution at our February 2005 meeting suggesting key features we believe any revision of the Act should include:

- Promote innovative platforms, applications and services in a technology-neutral manner;
- Consider the relative interests and abilities of the State and federal governments when assigning regulatory functions.
- Preserve the States' particular abilities to ensure their core public interests;
- Preserve customer access to the content of their choice without interference by the service provider;
- Ensure timely resolution of policy issues important to consumers and the market;
- Protect the interests of low income, high cost areas, and customers with special needs;
- Provide responsive and effective consumer protection; and
- Focus regulation only on those markets where there is an identified market failure.

An area of particular concern has been the evolving nature of federalism. While telephone customers have been making calls across state lines since at least 1884, the role of State commissions has evolved over time to match the structure of the market and the

needs of consumers. For many decades, a primary State commission task was to restrain the market power of a single national phone company (presumably with many centralized functions) by holding down local rates, preventing harmful cross-subsidies and requiring equitable build-out of facilities. More recently, States played a central role in facilitating wholesale markets for incumbent phone loops and other essential facilities for local competition, and developed sophisticated consumer hotlines to provide a human voice and individual attention to frustrated consumers.

As the communications market shifts again, NARUC has explored a pragmatic analysis that looks to the core competencies of agencies at each level of government – state, local and federal. While some State oversight roles will undoubtedly diminish where local competition grows, others will remain essential, especially as large parts of the market, including VOIP, still seek access to the Public-Switched Telephone Network (PSTN). In many cases, State jurisdiction need not rely on a readily separable "intrastate" component of a service. For example, effective consumer protection depends largely on where the consumer is domiciled, regardless of whether calls are placed to in-state or out-of-state destinations. Requests to interconnect depend on where the relevant facilities are located. Requests to receive universal service funds or to be designated as an Eligible Telecom Carrier ("ETC") for such funds depend on the geographic study area where service will be provided.

Ultimately, decisions about jurisdiction and oversight should be linked not to the particular technology used, but to the salient features of a particular service, such as whether it is competitive and how consumers and small businesses depend on it. States commissions excel at delivering responsive consumer protection, assessing market power, setting just and reasonable rates for carriers with market power, providing fact-based arbitration and adjudication. States are also the "laboratories of democracy" for encouraging availability of new services and meeting policy challenges at the grassroots level. An effective, pragmatic approach to federalism, in the IP world or otherwise, should recognize those strengths.

Consumer protection:

Even in an IP world, consumers will hesitate to depend solely on faraway federal agencies for consumer protection when they encounter disputes or frustrations with their service provider. State commissions operate sophisticated consumer hotlines that handle tens of thousands of consumer complaints every year, providing a live human voice on the other end of the line and individualized assistance each time there is a problem. In many case, our representatives need only provide an explanation to address a consumer's concerns, letting them know what "SLC" stands for on their bill or explaining an E911 assessment's purpose. Failing that, a State commission can mediate with the carrier or, if necessary, adjudicate a dispute.

Because we are on the proverbial front lines by handling so many complaints, State commissions are often the first to hear about new abuses or particular business practices that distress consumers. Effective consumer protection requires the authority

and the flexibility to address those concerns as they arise. This was the case with "slamming" and "cramming" on phone bills, which first became an issue at the State level and eventually became the subject of federal rules. A recent internal survey of NARUC's Consumer Affairs Committee revealed that State commissions in just 20 states handled over 233,000 complaints in 2004.

In some cases, VOIP services could actually raise new issues. For example if a customer of an unaffiliated VOIP provider experiences a service outage, and the VOIP provider and broadband provider are pointing fingers at each other, who will sort it out? The FCC is ill-equipped to remedy individual service outages and the customer is hardly in the position to solve it herself. State commissions have handled similar provisioning issues between CLECs and ILECs for years.

Emergency dialing – 911 and E-911:

As more families replace their traditional phones with VOIP service to take advantage of the pricing advantages and features, it is particularly important to make sure these services include reliable emergency dialing functionality that will route calls to the nearest Public Safety Answering Point (PSAP), indicate the caller's location and allow the 911 operator to call back if the call is disconnected. Such services should also be subject to the fees that support the modern PSAP network, especially as PSAPs undertake massive technology upgrades to accommodate IP and wireless services.

Unfortunately, thanks to a series of legal challenges and the FCC's ruling last year in the Vonage petition, there is currently no requirement for VOIP services to provide a 911 or E911 solution, and the right of VOIP services to interconnect to PSAP trunk lines is unclear. NARUC is encouraged by the progress that VON Coalition members and other VOIP providers have shown in beginning to provide 911 functionality, and we are engaged with both the industry and the public safety community in clearing away obstacles to a ubiquitous E911 deployment.

Ultimately, the appropriate regulatory treatment and classification should allow VOIP providers to avail themselves of the interconnection and arbitration procedures in Section 252 of the Telecom Act, with timely arbitration and reasonable pricing of those network elements necessary to provide E911 service, such as access to the selective router and appropriate databases.

The future of competition:

When Congress considered VOIP legislation in 2004, many suggested that competition oversight was unnecessary wherever Internet Protocol was used, averring that to broadband providers, "a bit is a bit." Unfortunately, the opposite proved true earlier this year when Madison River Communications deliberately blocked ports for customers of Vonage Holdings Corporation. The March 2, 2005 issue of *Internet Week* quoted Vonage CEO Jeffrey Citron as saying that:

"The advanced features of network analyzers already allow administrators to look not only at what types of packets are traversing their networks, but into the actual content of the packets."

Far from anonymizing competing providers, IP technologies may actually increase the ability to discriminate against particular traffic, or favor a partner's bits over those of an unaffiliated provider. While the FCC acted quickly with an enforcement action and a consent agreement with Madison River, such redress was only available because the company was offering a DSL service, and would not necessarily be available for a cable modem provider. In fact, if DSL is ultimately classified as an information service, such remedies will become even weaker.

Many of us are putting high hopes on all these new technologies and services to bring fresh competition to telecommunications. At the same time, the industry is experiencing a breathtaking run of mergers, with firms like AT&T and MCI – once bastions of local competition – now being absorbed by the Baby Bells they competed against, and there is significant consolidation in the wireless and cable industries as well. With so much restructuring, market power could increase in some geographic markets, even as it decreases in others. State commissions have extensive expertise in assessing market power in a local basis, providing relief where appropriate but able to reimpose oversight in the event of "backsliding."

If there is one thing we know, it is that the communications landscape of ten years from now will look vastly different than today's. Broadband connections might become commoditized as consumers seek their voice and other value-add services from unaffiliated firms like Vonage, Pulver, Skype and Microsoft, *or* those same providers could find themselves squeezed out by facilities-owners' "bundles" that include voice as a no-cost fringe benefit. Wireless broadband technologies might democratize the last mile and eliminate the traditional barriers to competition, *or* we could be left with a powerful duopoly that new entrants are hard pressed to compete against. And even as affluent early adopters flock to sophisticated new services, many consumers will continue to prefer a simple, basic phone connection that is not a part of any "bundled" package.

In all of this, it falls to policymakers not to forecast the next wave of innovation but to look out for consumers and set fair rules of the road that foster competition and allow the market to allocate resources efficiently. Our task is to be both optimistic and vigilant, letting innovation take its course, but demanding that our constituents are protected. While competitive VOIP companies are hesitant to be classified as "telecom service" providers, many are seeking the rights that Title II of the Telecom Act confers on telecom services:

- Guarantees of non-discrimination;
- Interconnection rights to the PSTN;
- Rights to interconnect to PSTN trunk lines to Public Safety Answering Points (PSAPs);
- Access to NANP telephone numbering resources;

- Local number portability;
- Access to pole attachments and rights-of-way; and
- Receipt of Universal Service Funds.

Many of these rights are adjudicated or otherwise facilitated by State commissions. In fact, if VOIP providers are unable to avail themselves of the State commission arbitration procedures of Section 252 of the Telecom Act, they will actually have inferior rights to those of their traditional competitors.

Universal service:

Voice over IP services also benefit from our nation's ubiquitous phone network supported by State and Federal universal service programs over the past several years. As a general matter, the only VOIP services that fetch a fee in the markeplace are those that exchange traffic with the PSTN – the ones that don't are usually free. In other words, at least in today's market, the majority of VOIP services are really offering a new way to call and be called by the traditional PSTN phones that most of us still use. That is why NARUC supports a broad and equitable contribution base to state and federal universal service programs so all service providers that rely on a ubiquitous telecom network – including VOIP providers – help maintain the universality of the network, with a similar spectrum of services at comparable rates in urban and rural areas.

State commissions help administer the federal USF, by designating Eligible Telecommunications Carriers (ETC) in each state, by regulating the cost recovery of many rural carriers that depend heavily on universal service, and by offering policy input through the Federal-State Joint Board on Universal Service. About 24 states also run their own intrastate universal service funds, addressing about $2 billion in high cost, low income and other needs that would otherwise be short-changed by federal formulas, or that simply don't require the *interstate* transfers that the federal USF was created to accommodate. Any universal service reform should either preserve those State funds or find a way to make consumers in those 24 states whole. By limiting the fees to customers domiciled in a particular state, a State fund can localize both the burden and the benefits, as opposed to further burdening customers in Mississippi or Arkansas to meet needs in California or New York.

Intercarrier compensation:

VOIP services must also pay their fair share, just as all other carriers do, when exchanging traffic with the PSTN. NARUC supports efforts to develop a rational, technology-neutral intercarrier compensation system that includes all carriers, including VOIP providers, avoids regulatory arbitrage and allows carriers to recover an appropriate portion of network costs. At the same time, State commissions should retain a role in this process reflecting their unique insight as well as substantial discretion in developing retail rates for carriers of last resort. NARUC is leading an intensive dialogue among the states and with the industry stakeholders to seek a consensus solution.

Video over IP

Because ten State commissions have jurisdiction over cable franchising, NARUC is in the process of examining the appropriate regulatory treatment of the IP video offerings by SBC and Verizon. As a legal matter, the individual State commissions will make determinations about whether those services must comply with Title VI franchising requirements as appropriate. As a policy matter in the context of federal legislation, NARUC members will go back to first principles, as we have with Voice over IP, and examine how to encourage innovation while preserving core public interests.

Conclusion:

We look forward to the continuing dialogue with the members of this Subcommittee, with federal regulators and with all the stakeholders about the future of telecom regulation. I am happy to answer any questions from membrs of the Subcommittee.